IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 891 of 2006
in
SPECIAL CIVIL APPLICATION No. 613 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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P S JOSHI - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
PARTY-IN-PERSON for Appellant(s) : 1,
MR SP HASURKAR, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 07/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

In this appeal, the appellant has challenged the validity of the judgment dated 26th September, 2005 delivered in Special Civil Application No. 613/04. By virtue of the impugned judgment, the order dated 11th July, 2001, whereby the appellant-petitioner had been removed from service, has been confirmed.

2. The appellant-petitioner has appeared in person. At the time when he started arguing the matter, he was asked whether he wanted to take any legal aid or assistance of a lawyer. He had refused to take any legal help from anybody, including any advocate.

3. Nine charges had been levelled against him, which had been proved in the inquiry and, therefore, the impugned order of removal had been passed. The said order of removal was challenged by the appellant by filing a review application before the State of Gujarat, but the review application had also been rejected on 28.11.2003. It is pertinent to note that the appellant had been removed from service for committing several financial irregularities. One of the allegations, which has been proved against him, is that though he had travelled to his hometown, he had got the LTC encashed. He could not have done so. If he had travelled and enjoyed the LTC, he could not have got it encashed as if he had not travelled. It has also been proved in the departmental inquiry that

during the period when he had actually proceeded on leave and had gone to his hometown, he had submitted bills claiming that he had travelled to different places for doing office work and had availed certain allowances. As he had proceeded on leave, he was not in the town and he was not performing his duties and, therefore, he was not entitled to any allowance in the nature of travelling allowance, etc. The aforesaid facts clearly denote that the appellant had abused his power and had misappropriated government funds and, therefore, he had misconducted. There are other charges also like misconduct and insubordination. The appellant did not resume duties at the place where he was transferred, so he did not respect the order of his transfer. As the appellant did not resume duties at the place of his transfer, the order of transfer had to be modified by the concerned authorities.

4. As stated hereinabove, the charges levelled against the appellant had been proved and, therefore, he was removed from service.

5. The appellant has argued his case at length. He has submitted that he was not given the charge sheet. The said submission does not appear to be correct because, the charge sheet had been given to him and there is evidence to the effect that on 4th January, 2000, he was given the charge sheet again though, according to the government authorities, charge sheet had already been given to the appellant earlier. He

has thereafter submitted that copies of relevant documents had not been furnished to him. When the appellant was asked to give details of documents, copies of which had not been given to him and yet they were relied upon, he was unable to pinpoint any document, copy of which was not given to him and yet the same was relied upon in the inquiry proceedings.

6. The appellant has further submitted that at the time of preliminary inquiry, he had raised certain objections but without considering his objections, the inquiry proceedings had been initiated. In our opinion, the said argument cannot be sustained for the reason that only on conclusion of the preliminary inquiry, the respondent authorities had decided to initiate proceedings and, therefore, the earlier objections need not have been looked into.

7. The appellant has thereafter submitted that there is some discrepancy with regard to number of witnesses examined in the departmental inquiry. He could not show as to how the typographical mistake had adversely affected him. We, therefore, do not consider the said submisison to be of any substance.

8. The appellant has levelled allegations of mala fides against some persons who had not been joined as respondents in the petition. Moreover, upon asking the appellant he had to admit the fact that it was for the first time that he was levelling allegations without any basis against some officers. In view of

the above fact, in our opinion, the said argument also does not help the appellant.

9. The appellant has thereafter submitted that in spite of the fact that there was a direction given by a competent authority, he was not taken up in service after removal from service. When we asked him to tell us about the authority, whose direction had not been complied with, the appellant has shown a letter written by a Member of the Legislative Assembly addressed to the concerned Minister and the Secretary, whereby the Member of the Legislative Assembly had requested the authorities to consider the case of the appellant with due sympathy and to do the needful as soon as possible. In our opinion, it cannot be said that a Member of the Legislative Assembly is a competent authority to give direction to the government authorities to the effect that the appellant should be taken up in service.

10. The appellant has thereafter submitted that he being a very sincere and scrupulous officer and was acting in a rightful manner, certain other officers wanted to harass him and, therefore, a trap had been laid to harass him. We do not give any credence to the said argument for the reason that all allegations, which had been levelled against the appellant, had been duly proved in the departmental inquiry.

11. It has also been submitted by the appellant that

on the basis of some audit report, the proceedings against the appellant had been initiated. At the relevant time, before even the preliminary inquiry had been held, according to the appellant, the audit report had been objected to by the appellant. The objection raised by the appellant had been turned down. Against the order,whereby his objections had been turned down, the appellant had made a representation, but the said representation had not been considered or was pending at the time when the inquiry had been initiated. According to him, the said fact would vitiate the inquiry. We do not agree with the said submission for the reason that ultimately departmental inquiry had been conducted and in the inquiry all relevant factors had been duly considered and only on the basis of the conclusions drawn by the concerned officers, the impugned order had been passed.

12. So as to substantiate his submissions, the appellant has relied upon the following three judgments delivered by the Hon'ble Supreme Court:

(1) Secretary to the Government, Transport Department, Madras v. Munnuswamy Mudaliar and others, AIR 1988 SC 2232.
(2) State of Punjab etc. Bakhtawar Singh and ors., AIR 1972 SC 2083.
(3) Ministry of Finance & anr. v. S.B. Ramesh, AIR 1988 SC 853.

13. On the other hand, learned AGP Shri Hasurkar has submitted that the allegations levelled by the appellant are vague and baseless. He has submitted that the impugned order was passed by the authorities only upon proving the charges levelled against him in the departmental inquiry held against him. He has submitted that the order of removal was just, legal and proper and the learned single Judge has rightly rejected the petition as there was no merit in the matter and the appeal also deserves to be dismissed.

14. We have carefully gone through the above judgments. In our opinion, the ratio laid down in the said judgments cannot be disputed. However, the said judgments do not render any help to the appellant.

15. In view of the fact that the order of removal is just, legal and proper, the learned single Judge did not entertain the petition. We are also of the view that the order of removal, which has been confirmed by the learned single Judge, is just, legal and proper.

The appeal is, therefore, dismissed.

(Anil R. Dave, J.)

(H.N. Devani, J.)

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